IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

CRP.No. 1067 of 2006()

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AGAINST THE ORDER DATED 20/12/2006 IN EA 331/2006 IN
EA.319/2006 of DISTRICT COURT, THRISSUR
EOP.30/2005 of PRL.MUNSIFF COURT,THRISSUR

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REVN. PETITIONER: 1ST RESPONDENT/PETITIONER.

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M.G.JOSEPH, S/O.MEKKATTUKULANGARA GEORGE
ANJOOR VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS: APPELLANT & 2ND RESPONDENT/RESPONDENTS.

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1. C.V.KURIAKOSE, S/O.VADERIATTIL VELU,
P.O.ANJOOR MUNDUR, ANJOOR VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT.

2. DINESAN, S/O.VADERIATTIL VELU,
P.O.ANJOOR MUNDUR, ANJOOR VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 11/01/2007, ALONG WITH CRP NO. 1068 OF 2006 THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:
:

M.Sasidharan Nambiar,J.

C.R.P.No.1067 & 1068 of 2006

Dated this the 11th day of January 2007

O.R.D.E.R

First respondent was the elected candidate for Ward No.4 of Kaiparambu Grama Panchayath, in the election held on 24.9.05. Petitioner was one of the defeated candidates. First respondent secured 714 votes while petitioner secured only 330 votes. First respondent was declared elected. Petitioner filed Election O.P.30/05, to set aside the election of first respondent and to declare himself as the elected candidate. Prayers in the election petition were:-

1) to declare that the acceptance of nomination paper of first respondent was improper.

2) to declare that petitioner was elected candidate after declaring election of first respondent as void.

2. Case of petitioner was that along with nomination paper details furnished by first

respondent in Form 2A are not complete. Though there was arrears due to BSNL on the date of submission of nomination paper that was suppressed in Form No.2A. So also educational qualification of first respondent are not fully disclosed in Form 2A. It was contended that Returning Officer should not have accepted his nomination paper. It was also contended that revenue recovery proceedings were initiated against mother of first respondent and so petitioner was disqualified from contesting in the election and for all of the said reasons election of first respondent is to be set aside. First respondent filed an objection contending that election petition itself is not maintainable and there is no improper acceptance of nomination paper and election petition is to be dismissed. Prl.Munsiff, Thrissur as per order dated 17.11.06 held that non-disclosure of arrears due to BSNL is sufficient to reject nomination paper of first respondent and as it was improperly accepted, election of first respondent is liable to

be set aside. It was also found that petitioner is entitled to get himself declared the returned candidate. First respondent challenged that order before District Court, Thrissur in Election Appeal 319/06 and Election Appeal 331/06. One of the appeals was challenging the finding of Munsiff that arrears of mother of first respondent is not a ground to disqualify him or to reject nomination paper of first respondent. So also finding of learned Munsiff that there is no suppression of educational qualification of first respondent was challenged in that appeal. Learned District Judge after hearing petitioner and respondent found that Form 2A does not contemplate details of arrears due to BSNL to be shown therein and therefore found that it cannot be said that there was improper acceptance of nomination paper and hence set aside the order of learned Munsiff and dismissed the election petition. Learned District Judge also confirmed finding of learned Munsiff on other grounds which was found by learned Munsiff against

petitioner. C.R.P.1067/06 and 1068/06 were filed challenging the common order in both the appeals.

3. Learned counsel appearing for petitioner and first respondent were heard.

4. The points for consideration are whether non-disclosure of arrears of telephone bill due to BSNL by first respondent or revenue recovery proceedings against mother of first respondent or non-disclosure of all the educational qualifications of first respondent are sufficient grounds to reject the nomination paper and if so, whether election of first respondent is vitiated by improper acceptance of nomination paper.

5. Section 52 (1A) of the Kerala Panchayat Raj Act was inserted by Kerala Panchayat Raj Fifth Amendment Act, 2005 with effect from 22.8.05. Section 52(1A) reads:-

> "(1A) Every candidate submitting nomination under sub-section (1) shall not be deemed to be qualified to be elected to fill

that post unless he submits, along with such nomination, the details regarding his educational qualification, criminal cases in which he is involved at the time of submission of nomination, property owned by him and other members of his family, liabilities including arrears due from him to any Public Sector Undertaking or Government or Local Self Government Institutions and whether disqualified for defection under the Kerala Local Authorities (Prohibition of Defection) Act, 1999, in the form and manner as may be prescribed."

6. Section 102(ca) was also inserted to Section 102, by the same Act which reads as follows:-

"(ca) that the details

furnished by the elected candidate under sub-section (1A) of Section 52 were fake or."

Therefore by Kerala Panchayat Raj Fifth Amendment Act,2005 an additional ground as clause (ca) was introduced to Section 102 which empowers the court to set aside an election if the details furnished by elected candidate under sub section (1A) of Section 52 were fake. Under sub section (1A) of Section 52 every candidate submitting nomination as provided under sub section (1) shall not be deemed to be qualified to be elected to fill the post unless he submits along with nomination the details provided thereunder in the form and in the manner as may be prescribed. Form 2A provides the details to be furnished by a candidate as contemplated under section 52(1A). Clause (3) deals with the details to be furnished with regard to the liability and arrears. Under sub clause (a)(i) the candidate has to disclose the details of the loan

obtained from the Bank. Under sub clause (ii) of clause (a), the details of the loan obtained from public undertakings are to be furnished. Under sub clause (iii) of clause (a) the details of the arrears due to the State except the dues under the Income tax and wealth tax are to be shown. Under sub clause (i) of clause (b), details of the surcharge and income tax are to be furnished. Under sub clause (ii) of clause (b), the details of wealth tax and under sub clause (iii) details of salestax and under sub clause (iv), details of property tax are to be furnished. Though sub clause (ii) of Clause (a) of Form 2A provides that candidate shall furnish details of loan including arrears of loan as on that date, it does not provide that any other arrears due to a public undertakings shall be furnished by candidate in Form 2A. The argument of learned counsel appearing for petitioner is that though Form 2A does not provide that the details of arrears due to public undertakings are to be shown by a candidate, sub

section (1A) of Section 52 provides that liability including arrears due from him to any public sector undertaking or Government or local self Government institutions are to be furnished and therefore eventhough there is no specific column in Form 2A, it should have been furnished by a candidate and if not furnished Form 2A is not a completed form as provided under sub section (1A) and therefore candidate shall not be deemed to be a qualified candidate. The argument was that as there was arrears dues to BSNL from first respondent on the date of acceptance of nomination paper and it was not disclosed, Returning Officer should not have received his nomination paper and therefore it is an improper acceptance of nomination paper which is a ground to set aside election as provided under section 102.

7. Learned counsel appearing for respondent pointed out that in the election petition the ground provided under sub clause (i) of clause (d) of sub section (1) of Section 102 was not taken and

instead election is sought to be set aside only on the ground that nomination paper was improperly received by Returning Officer and there is no pleading that it has materially affected the election. Section 102 (1)(d)(i) reads:-

> "102(1):- Subject to the provisions of sub section (2) if the Court is of opinion-
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> xx xx xx
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> xx xx xx
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
>
> (i) by the improper acceptance of any nomination, or
>
> xx xx xx

xx xx xx

the court shall declare that the election of the returned candidate to be void.

A reading of election petition shows that election was not challenged as provided under section 102(1)(d)(i) of the Act. At best it could be said that in the election petition, petitioner sought a declaration that acceptance of nomination paper by first respondent was improper. What was sought for in the election petition as relief 'B' was election of first respondent in the election held on 24.9.05 is illegal and to be set aside. As rightly argued by learned counsel appearing for first respondent there is no pleading in an election petition that the result of election petition has been materially affected by the improper acceptance of nomination paper. Eventhough it was argued by learned counsel appearing for

petitioner relying on **Durai Muthuswami v. N.Nachiappan (AIR 1973 SC 1419)** and in **Vashist Narain Sharma v. Dev Chandra (A.I.R.1954 SC 513)** that want of pleading is not a defect, the facts of those cases are entirely different. In **Durai Muthuswami's case (supra)** there were only two candidates and the result of the election would have been definitely affected if one of the nomination paper was rejected. Their Lordships in the circumstances of the case held:-

> "Under section 83 all that was necessary was a concise statement of the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's

nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under section 9A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this

case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to

stand for the election or be declared to be elected."

In **Vashist Narain Sharma's case (supra)** the question whether there should be a pleading to the effect that election has been materially affected by the improper acceptance or rejection of a nomination paper was not considered. In that case only the burden of proof was considered in the light of arguments addressed. Their Lordships held:-

> "The learned counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the election lies upon the petitioner but he argues that the question can arise in one of three ways:-
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> (1) where the candidate whose nomination was improperly accepted had secured less votes than the

difference between the returned candidate and the candidate securing the next highest number of votes.

(2) where the person referred to above secured more votes, and

(3) where the person whose nomination has been improperly accepted is the returned candidate himself.

It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the (next?) highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it is contended that the result is

> materially affected. So far as the third case is concerned it may be readily conceded that such would be the conclusion."

So long as the right to file a petition to set aside the election is a statutory right, unless petitioner alleges the ingredients including the fact that the alleged improper acceptance of nomination paper materially affected the election, election cannot be set aside under section 102(1)(d)(i) of the Act. Once there is a pleading whether any other evidence to prove the allegation is necessary or not as improper acceptance of nomination paper was that of the returned candidate, is a different question. But that will not enable the petitioner to get over the defect of want of pleading.

8. The question is even if it is taken that election is challenged under the ground of Section 102(1)(d), election of first respondent is liable to be set aside.

9. Section 52 of Kerala Panchayat Raj Act provides presentation of nomination paper and requirements for a valid nomination. Section 55 provides for scrutiny of nomination paper. Under sub section (2) of Section 55, Returning Officer shall examine the nomination paper on the date fixed for the scrutiny of nominations and shall decide all objections which may be made to any nomination and reject nomination on the following grounds.

(1) that on the date fixed for the scrutiny of nominations, the candidate is either not qualified or is disqualified for being chosen to fill the seat under any of the provisions of this Act.

(2) that there has been failure to comply with any of the provisions of Section 52 of Section 53,

(3) if he is satisfied that the signature of the candidate or the proposer on the nomination paper is not genuine.

If the nomination paper of first respondent could not have been rejected by Returning Officer on any

of the said grounds, it cannot be said that acceptance of his nomination was an improper acceptance which is a ground for setting aside election as provided under section 102(1)(d)(i). Even according to petitioner, first respondent was not disqualified or not qualified for being chosen as a member of Panchayat. The only contention was that as first respondent failed to comply with the provisions of Section 52(1A) and so nomination paper should have been rejected. There was no case of any other violation of Section 52 or 53 except the provisions of sub section (1A) of Section 52. If the candidate submitted a nomination paper and along with the nomination paper, furnished Form 2A with the details contemplated therein, Returning Officer is not competent to reject the nomination paper. If that be so, it cannot be a ground to set aside election under section 102(1)(d)(i).

10. The question then is whether for the failure to furnish details of arrears of telephone bill due to BSNL, Returning Officer could have

rejected the nomination paper submitted by first respondent. As rightly found by learned District Judge, under sub section (1A), first respondent has to furnish details in the form and manner prescribed by the Act. First respondent could have furnished the details contemplated under sub section (1A)only as provided under Form No.2A. Relying on the decisions of the Apex Court in **M/s.Aphali Pharmaceuticals Ltd v. State of Maharashtra (AIR 1989 SC 2227)**and in **Maharashtra State Road Transport Corporation v. Babu Goverdhan Regular Motor Service Warora and others (AIR 1970 SC 1926)** it was argued that when the prescribed form is not in conformity with the rules, rules will prevail and therefore though Form 2A does not contain a column on the arrears due to BSNL, under the rules, it should have been shown and as it was not shown it is a ground for rejecting the nomination paper. I cannot agree. So long as Form 2A does not provide that the details of arrears due

to the public undertaking is to be shown, for the failure to show the said details it cannot be said that acceptance of nomination paper was an improper acceptance. When section 52(1A) mandates that the particulars are to be furnished in the form and manner prescribed, a candidate could only furnish the particulars as provided in Form 2A. If so it cannot be a ground to set aside the election. Similar is the case with the details of the educational qualification. Learned Munsiff has rightly found that revenue recovery proceedings against mother of first respondent is not a ground to disqualify petitioner from being a candidate. Once the particulars are furnished in Form 2A, then only if the particulars are fake, it is a ground to set aside the election under section 102(ca).

There is no merit in the revision petitions. Civil Revision Petitions are dismissed.

M.Sasidharan Nambiar
Judge

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M.SASIDHARAN NAMBIAR, J.

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CRL.R.P.NO. /97

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ORDER

MARCH,2006